IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

W.A.No.576 of 2003(C)

AGAINST THE JUDGEMENT IN O.P.NO.458/2001 DATED 22/01/2002

.....

APPELLANTS/RESPONDENTS IN THE O.P.:-

---

1. THE DEPUTY TAHSILDAR (RR), ERNAKULAM.

2. THE SPECIAL OFFICER (RR), ERNAKULAM.

3. THE SALES TAX OFFICER, CIRCLE-II, ERNAKULAM.

4. THE STATE OF KERALA,
   REP. BY SECRETARY, SALES TAX DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

RESPONDENT/PETITIONER IN THE O.P.:-

J.C.AUGUSTINE,
G-346 PANAMPILLY NAGAR,
KOCHI - 682 036.

BY ADV. SRI.MOHAN PULIKKAL.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.576 of 2003-C

Dated, this the 19th day of July 2007

JUDGMENT

H.L.Dathu,C.J.

This appeal arises out of an order passed by the learned Single Judge in O.P.No.458 of 2001 dated 22nd January, 2002.

(2) The petitioner was the Managing Director of a Private Limited Company, known as "Remanika Silks Private Limited", M.G.Road, Ernakulam. He was removed from the Managing Directorship as well as Directorship of the Company some time in January, 1997. The assessing authority has completed the assessment against the Company for the assessment year 1996-97 some time in the year 2000. Thereafter have initiated proceedings to recover taxes due under the Kerala General Sales Tax Act ("Act" for short) for the assessment year 1996-97, both against the petitioner and other Directors.

(3) Since the petitioner has already been removed both from the Managing Directorship as well as Directorship of the Company and since he is expressing acute financial difficulties, it may not be desirable to fasten the tax liability on him, especially when the Company has its assets and other directors available. The respondents, who are the appellants herein, can recover the amounts due under the Act from the Company and from other Directors. In that view of the matter, without going into the question whether

the provisions of Section 26C, which has been introduced with effect from 1.4.1999, has any retrospective or retroactive effect, the appeal is disposed of.

(4) Liberty is reserved to the State Government to raise the aforesaid contention in an appropriate proceedings. The orders passed by us in this case need not be treated as a precedent in any other case.

Consequently, C.M.P.No.1824 of 2003 is dismissed.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/dk